

TROTTER 5857, LLC,

PETITIONER

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BEFORE THE ZONING BOARD

OF HOWARD COUNTY

ZONING BOARD CASE NO. 1091M

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DECISION AND ORDER

On July 13, 2011, the Zoning Board of Howard County, Maryland considered the petition of Trotter 5857, LLC ("Trotter") to amend the Zoning Map of Howard County so as to reclassify from the NT (New Town) District to the R-20 (Residential: Single) District, 43,976 square feet of land located on the east side of Trotter Road, approximately one mile south of the intersection with Maryland 108, identified as Tax Map 35, Grid 2, Parcel 220, in the 4th Election District of Howard County, Maryland.

The notice of hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedures, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. The Department of Planning and Zoning and the Planning Board recommended that the subject property be rezoned to R-20.

Trotter was represented by Andrew H. Robinson, Esquire. No residents appeared in opposition to the proposed rezoning. Eileen Powers, Esquire, Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code, but did not oppose the proposed rezoning.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. To establish the NT District, a petitioner must obtain approval of a Preliminary Development Plan ("PDP"), which is a generalized drawing or series of drawings of the proposed NT District, with appropriate text materials, setting forth, among other things, the major planning assumptions and objectives of the proposed development. Thereafter, in order to develop NT zoned property, the petitioner must obtain approval of a Final Development Plan ("FDP") indicating, among other things, the approximate boundaries and acreage for each of the proposed land uses within the proposed district. *See* Howard County Zoning Regulation ("HCZR"), § 125.

2. The NT District was established by Howard Research and Development ("HRD") in 1965 to facilitate development of Columbia, Maryland. The subject property abuts the last of the planned development phases of Columbia, the Village of River Hill.

3. Trotter submitted the PDP for River Hill, which it requested and received from the parent company of HRD. The PDP does not incorporate the subject property into the River Hill development. Instead, the subject property is depicted on the PDP as R (Rural) Zoning District.

4. Trotter also submitted a copy of the FDP for the abutting and contiguous 79.162 acre section of River Hill, which was filed among the land records of Howard County. In the FDP, the subject property is again designated "R," is not incorporated into the adjacent section of River Hill, and is not made subject to the FDP zoning criteria.

5. Section 125 of the Zoning Regulations expressly states that “no NT District shall be established except upon land the beneficial title to which is in the person, firm or corporation executing the petition (HCZR, § 125.A.3), and that “if the petitioner is not the legal as well as the beneficial owner of the property, the petition shall ... contain a written assent to the petition signed by the legal title holder.” HCZR, § 125.B.1.a.(2). Section 125 further provides that “[n]o NT District shall be created except by the procedure set forth herein.” HCZR, § 125.A.3.

6. Trotter presented deeds demonstrating that, from 1959 to the present, HRD has not held legal title to the subject property. Trotter is unaware of any legal title holder petitioning or providing written assent to any petition to rezone the subject property to the NT District. HRD, the original petitioner of the NT District, has repeatedly depicted the subject property with the zoning designation of “R,” and has never petitioned to rezone the subject property to the NT District.

7. The Rural Zoning District was discontinued in the 1993 Comprehensive Zoning. Properties to the north of the subject property on Trotter Road, and across Trotter Road to the west and southwest, were rezoned R-20. Properties to the east and southeast of the subject property, in the River Hill development, remained NT.

CONCLUSIONS OF LAW

1. Trotter, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the subject property and/or change in the character of the neighborhood of the subject property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

2. There is ample evidence in the record demonstrating mistake in the 2004 Comprehensive Zoning of the subject property to the NT District, as identified in the Department

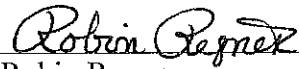
of Planning and Zoning's Technical Staff Report and the Board's findings of fact one through six above, to overcome the strong presumption of correctness attached to that comprehensive zoning. Specifically, the evidence demonstrates that no legal title owner of the subject property has ever petitioned or assented to any petition to rezone the subject property to the NT District and, therefore, the subject property's inclusion into the NT District violates Section 125 of the Zoning Regulations, which expressly conditions establishment of the NT District on the owner's petition or assent. Accordingly, Trotter has met the onerous burden of proving strong evidence of mistake in the comprehensive zoning of the subject property sufficient enough to permit the requested rezoning.

3. Trotter has presented sufficient evidence for the Board to conclude that the appropriate zoning category for the subject property is the R-20 Zoning District, given the R-20 zoning that surrounds the subject property. Accordingly, the Board concludes that R-20 is the appropriate zoning for the subject property.

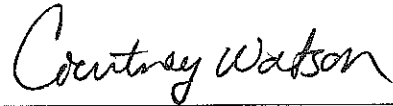
For the foregoing reasons, the Zoning Board of Howard County, on this 6th day of September, 2011, hereby GRANTS Trotter's request for rezoning of the 43,976 square feet subject property from the NT to the R-20 Zoning District.

ATTEST:

ZONING BOARD OF HOWARD COUNTY

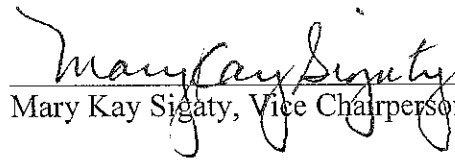


Robin Regner
Administrative Assistant

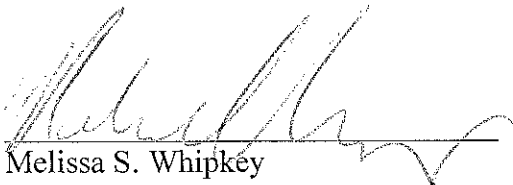


Courtney Watson, Chairperson

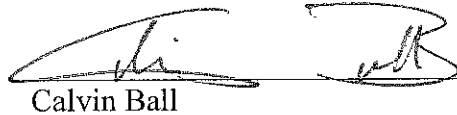
PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR



Mary Kay Sigaty, Vice Chairperson



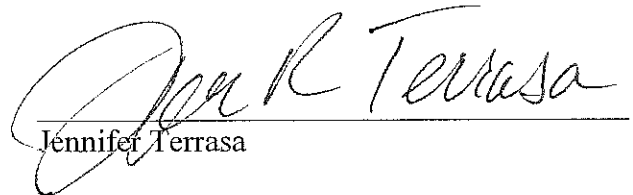
Melissa S. Whipkey
Assistant County Solicitor



Calvin Ball



Greg Fox



Jennifer Terrasa